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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,816	09/30/2003	Johann J. Neisz	AMS-029B	6669

22850 7590 08/17/2006

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EXAMINER

GILBERT, SAMUEL G

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/675,816	NEISZ ET AL.	
	Examiner	Art Unit	
	Samuel G. Gilbert	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-14,36-39 and 42-52 is/are pending in the application.
- 4a) Of the above claim(s) 44-52 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,6-14 and 43 is/are allowed.
- 6) ☒ Claim(s) 36-39 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Kammerer et al (2002/0077526). The applicant's attention is invited to Figure 3a and Figure 4. The examiner is taking element –112- as a dilator and the method is set forth in figure 4 and the related written description. The examiner is taking the position that the applicant does not have support for the embodiment as claimed in claims 36-39 prior to the filing date 7/27/2001 of US patent application 10/005,837. The filing date for Kammerer et al is 6/4/2001. The dilator element -112- is tapered as shown in figures 3A and 3D.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gellman in view of Landgrebe 2002/0091298.

Gellman teaches kit as claimed including material -50-, a needle -20- and a dilator -40- but does not set forth a plurality of handles for the needle. Landgrebe teaches the concept of a plurality of different handles for use with surgical needles. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a kit having a plurality of handles for each of the needles in the kit to allow the surgeon to select the desired handle based on patient conditions and personal preference. A plurality of handles provides the benefit of selecting the handle that best fits the surgeon's hand/hands as taught by Landgrebe.

Response to Arguments

Applicant's arguments filed 6/12/2006 have been fully considered but they are not persuasive. Regarding the arguments directed to claim 42, the applicant argues Gellman does not set forth two needles and upon reconsideration the examiner agrees that Gellman does not teach a kit or method including two needles of the same or different type. Claim 42, however, only requires a single needle.

Allowable Subject Matter

Claims 1, 3, 4, 6-14 and 43 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or fairly suggest the first or second needle including

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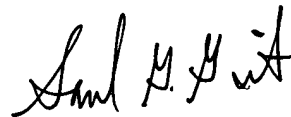
"means for transporting said implantable sling material and dilator". The examiner is taking the claim to invoke 112 6th paragraph.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert
Primary Examiner
Art Unit 3735

sgg